THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1040 of 2001.
(Old FAFO No. 1040 of 1997)

New India Assurance Company Ltd.,
Head Office, 87, M.G.Road, Mumbai through
The Senior Divisional Manager, New India Assurance
Co. Ltd., Divisional Office, 15 M.G.Marg, Civil Lines,
Allahabad.

…..Appellant.

Vs.

1. Rajendra Pal alias Raju Lal, S/O Shri Atwari Lal,
   Resident of village Gandhi Nagar, Karan Prayag, Thana
   Karan Prayag, District Chamoli,
   (Claimant)
2. Avtar Singh Son of Sri Jai Singh
   C/O M/s Manoj Automobiles, T.C.P. Land, Karan Prayag,
   District Chamoli.

….Respondents.

Sri T.A. Khan, learned counsel for the appellant.
Sri Pradeep K. Pande, holding brief of Sri R.P.Nautiyal, learned counsel for the claimant-respondent no.1.

Date June 22, 2006
P.C.: Hon'ble B.S.Verma, J.

The present appeal under Section 30 of the Workmen's Compensation Act ***(hereinafter referred to as the Act),*** is directed against the judgment and award dated 8-9-1997 passed by Shri Himanshu Kumar, the then Workmen's Compensation Commissioner Chamoli ***(for short the Commissioner)*** in W.C. Case No. 07 of 1993, Rajendra Pal alias Rajju Singh Vs. Avtar Singh and others, whereby the compensation of Rs. 55,343/- was awarded in favour of the claimant payable by the Insurance Company-appellant as mentioned in the impugned order.

The relevant facts necessary for a just decision of the appeal are that the claimant-workman filed claim petition under the Act with the allegations that he was employed as conductor under the employment of the Opposite Party No.1 Avtar Singh in the vehicle and due to accidental injuries suffered by him on 20-12-1993, he has become permanently disabled and is unable to move. It was also alleged that the first column of back bone got dislocated

and there is no possibility of its healing. The claimant spent about Rs. 50,000/- on his treatment. The claimant was getting wages @ Rs. 1,200/- per month from the owner of the vehicle and he was aged 19 years at the time of accident. The claim petition was filed for compensation of Rs. 3,00,000/-.

Notices were issued to the opposite parties. The owner of the vehicle contested the claim petition and filed his written statement. It was admitted that the claimant was employed as conductor and it was stated that he was being paid Rs.1,000/- as monthly salary. The vehicle was duly insured with the appellant company, hence, the insurer was liable to pay compensation.

The appellant-O.P.No.2 filed its written statement and resisted the claim petition. It was asserted that the driver, who was driving the vehicle at the time of accident was not having a valid driving licence and other relevant papers. It was pleaded that the claimant has not filed any evidence regarding his age and income and medical certificate of disability, therefore, the insurer was not liable to pay compensation.

On the pleadings of the parties, the learned Commissioner framed necessary issues in the case, recorded the evidence led by the parties and after hearing the parties, it came to the conclusion that at the time of motor accident, the claimant was employed as conductor in bus No. UMS-8373 under the employment of opposite party no.1. On issue no.2 regarding validity of driving licence, it was found that driver Kalam Singh was having a valid driving licence on the date of accident. It was also held that all valid papers were there in respect of the vehicle involved in the accident and the vehicle was duly insured. On Issue No.3, the learned Commissioner came to the conclusion that the claimant-injured was entitled to compensation of Rs. 55,343/- payable by the Insurance Company and accordingly passed the impugned award.

I have heard learned counsel for the Insurance Company-appellant and perused the entire material on record.

At the outset, it may be noted that an appeal under Section 30 of the Act is maintainable only when any substantial question of law is involved for determination in the appeal. No substantial question of law has been formulated in the memo of appeal.

The only substantial question of law which has to be determined in this appeal is whether the finding of the Commissioner that the driver of the offending vehicle was having a valid driving licence on the date of accident is based on evidence on record or not? If not, its effect?

It is true that the appellant-Insurance Company in its written statement has taken the stand that the driver of the vehicle was not having a valid driving licence. The learned Commissioner framed Issue No.2 on this point. The argument of the learned counsel for the appellant is based on the issue that the driver Kalam Singh had a licence to drive light motor vehicle and he could not be said to have possessed a valid driving licence. This argument is misconceived. The accident in question, admittedly, occurred on 20-12-1993. The original driving licence is on record, which makes it clear that with effect from 15.12.1991, the driver Kalam Singh was authorized heavy motor vehicle under the authority of the licensing authority and as per endorsement and the driving licence was bearing endorsement for hill driving w.e.f. 1.12.1993. According to the stand of the appellant-insurance company itself got necessary verification done from the office of the Licensing Authority, which is paper no. 23/4 on the file of lower court, therefore, it does not lie in the mouth of the appellant to take such a lame stand in this appeal. On the face of original driving licence of

Kalam Singh Kathaut (paper no. 23/5) it is fully established that the vehicle was being driven by a duly licensed person.

The appellant has also challenged the legality of the finding of the learned commissioner on the point of salary of the injured claimant, which too is not tenable for the simple reason that the claimant has specifically deposed on oath that he was getting salary of Rs. 1,200/- per month from his employer, but no cross-examination has been made by either of the opposite parties on this point, therefore, this part of the testimony of the claimant remained unchallenged and the learned Commissioner has rightly accepted the monthly salary of the injured to be Rs. 1200/- per month. It was for the appellant-Insurance Company to have led concrete and reliable evidence to prove otherwise, but the same has not been done.

Therefore, though no substantial question of law was involved in the present appeal under the Act, even then there is no merit in the appeal on the grounds taken in the memo of appeal.

For the reasons aforesaid, the appeal lacks merit and is liable to be dismissed.

The appeal is hereby dismissed. The impugned judgment and award dated 30-9-1997 is upheld. Costs easy.

The interim order dated 11.12.1997 passed by the Court in this appeal is hereby vacated.

(B.S.Verma,J.)

RCP